IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 61 OF 2005

Balkrishna Sitaram Purnekar. ... Appellant.
Versus.
Smt.Anandibai Shanivar Jadhav. ... Respondent.

Shri S.M.Oak for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 2nd February, 2005.

P.C.:

1. This Second Appeal is preferred by the unsuccessful Plaintiff in a suit for possession based on title.

2. For establishing the title, reliance was placed by the Appellant on the assessment record pertaining to the assessment of property tax by the local authority. The Appellate Court held that the assessment record cannot be a document of title. There is further finding of fact recorded by the Appellate Court that the documents pertaining to the assessment produced by the Appellant do not relate to the property in dispute.

3. The learned Counsel for the Appellant has placed reliance on the Judgment of the Apex Court reported in (2003) 8 SCC page 752 (R.V.E.Venkatachala Gounder v/s.Arulmigu Viswesaraswami & V.P.Temple and anr.)and submitted that the entries in the assessment record is conclusive evidence of title. He relied upon paragraph

26 of the said Judgment. The Apex Court in paragraph 26 has held thus:

> ".....An entry in the municipal record is not evidence of title. The entry shows the person who was held liable to pay the rates and taxes to the municipality. The entry may also, depending on the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes. If the property belonged to the temple, there is no reason why the temple would not have taken steps for having its own name mutated into the municipal records and commencing payment of taxes or claimed exemption from payment of taxes if the charity was entitled under the law to exemption from payment of taxes. The temple has not been able to produce any evidence, oral or documentary, to prove its title to the property. Only because the tenant attorned to the temple and started paying rent to the temple in 1969 or that the temple paid the property tax to the Municipal Committee after 1969 does not establish its title to the

> property in question. These documents are not of much evidentiary value as these documents came in existence after the dispute had arisen between the parties. In the absence of any other lawful claimant the appellant on the strength of the documents produced by him was rightly held to be the owner by the courts below the High Court. Attornment by the tenant in favour of the temple was also rightly held to be invalid. The appellant, in our opinion, would be entitled to recover possession as well as the arrears of rent."

The Apex Court after holding that the entry in the Municipal record is not the evidence of title has considered the fact of the case before it and has recorded the finding regarding the title. In this view of the matter, the decision of the Apex Court in the said case will not help the Appellant.

4. Apart from this, there is findings of fact recorded by the Appellate Court that the documents pertaining to the municipal assessment produced by the Appellant are not shown to be relating to the property in question.

5. In this view of the matter, no fault can be found with the Appellate Court if the suit filed by the Appellant on the basis of title was dismissed.

6. No substantial question of law arises in the Second Appeal. The same is accordingly dismissed with no order as to costs.

Judge.